

August 2008

Dear Friends,

This is the third edition for 2008 of **Eye on the ICC**, a regular e-update on developments at the International Criminal Court (ICC) as they relate to promoting women's human rights and gender justice.

Eye on the ICC provides up-to-date information on the substantive work of the ICC, its investigations and prosecutions, trials, participation of victims/survivors, and judicial decisions as well as our own work in ensuring the prosecution of gender-based crimes, access to justice for women in conflict situations and reparations for women victims/survivors of war and armed conflicts.

More information about the work of the Women's Initiatives for Gender Justice and previous editions of **Eye on the ICC** can be found on our website, www.iccwomen.org. If you would like to subscribe to **Eye on the ICC**, please send an e-mail to grcampaign@iccwomen.org with your name, contact information and organization. We look forward to hearing from you.

Sincerely,

Women's Initiatives for Gender Justice

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International Criminal Court

- Darfur, Sudan
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Women's Initiatives for Gender Justice

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International Criminal Court

There are currently 4 situations before the Court at various stages of proceedings: Darfur, Sudan; Democratic Republic of the Congo (DRC); Uganda; and, the Central African Republic (CAR).

Summary

On 14 July, the Prosecutor submitted an Application for a Warrant of Arrest for President Omar Hassan Ahmad Al Bashir of Sudan to Pre-Trial Chamber I (PTC I). The Prosecution alleges that Al Bashir is criminally responsible for genocide, crimes against humanity and war crimes in Darfur. The charges against Al Bashir include rape as a form of genocide and as a crime against humanity. The arrest warrants for Ahmad Harun, State Minister for Humanitarian Affairs and Ali Kushayb, a senior Janjaweed leader, are still outstanding.

In the DRC, on 2 July, the Trial Chamber ordered the release of Thomas Lubanga subject to a ruling from the Appeals Chamber. On 7 July, the Appeals Chamber granted suspensive effect to the Appeal of the Prosecutor in the case. The decision of the Trial Chamber to release Lubanga is, therefore, currently suspended. On 8 July, the legal representatives of victims made an application to participate in the appeal. On 11 July, the Prosecution applied to the Trial Chamber for a lift in the Stay of Proceedings in the trial of Thomas Lubanga. The Stay in the Proceedings was imposed by the Trial Chamber on the basis that it had not had an opportunity to review potentially exculpatory materials due to the non-disclosure by the Prosecution of such materials that were obtained under Article 54 (3)(e) of the Rome Statute. The Prosecution informed the Trial Chamber that the information providers had agreed to the Trial Chamber reviewing the materials and thus, there is no longer a basis for the suspension of proceedings in the case.

On 16 July, Confirmation Hearing of Charges for Germain Katanga and Mathieu Ngudjolo Chui, the first two suspects from the DRC to be indicted for gender-based crimes, were concluded. A decision from PTC I determining the nature of the charges against them is expected in the next two months. The Hearings were concluded in the absence of Mr Katanga, who waived his right to attend the confirmation hearings since 9 July. The warrant of arrest for Bosco Ntaganda remains outstanding.

On 9 July, the Government of Uganda (GoU) responded to the 18 June request of Pre-Trial Chamber II (PTC II) for detailed information on the developments surrounding the GoU's co-operation with executing the arrest warrants against Lord's Resistance Army (LRA) commanders: Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen. The GoU reiterated its commitment to co-operating with the ICC and stated that it "continues to...secure the co-operation of the Government of the Democratic Republic of the Congo (DRC) and the United Nations Mission in the DRC (MONUC)" in arresting the accused and noted that the LRA has been based in the DRC for the past 3 years.

On 4 July, Jean-Pierre Bemba Gombo made his first appearance in front of Pre-Trial Chamber III (PTC III) in relation to crimes allegedly committed in CAR by the *Mouvement de Libération du Congo* (MLC) militia group. Mr Bemba is alleged to be criminally responsible for war crimes and crimes against humanity, including rape, committed by the MLC in CAR between 25 October 2002 and 15 March 2003. On 22 July, Bemba's property has been seized by the Portuguese authorities on behalf of the ICC.

Below is a detailed summary of the most recent developments in each of the situations before the Court:

Darfur, Sudan

On 14 July 2008, the Office of the Prosecutor (OTP) submitted to Pre-Trial Chamber I (PTC I) an Application for a Warrant of Arrest under Article 58 against the President of Sudan, Omar Hassan Ahmad Al Bashir (“Al Bashir”), for three counts of genocide, five counts of crimes against humanity, and two counts of war crimes in Darfur.

Al Bashir is charged with genocide under Article 6 of the Rome Statute for: (a) killing members of the Fur, Masalit and Zaghawa ethnic groups; (b) causing serious bodily or mental harm to members of those groups; and (c) deliberately inflicting on those groups conditions of life calculated to bring about their physical destruction in part. Al Bashir is also charged with crimes against humanity under Art. 7(1) of the Rome Statute, committing acts of (a) murder; (b) extermination; (d) forcible transfer of the population; (f) torture; and, (g) rapes, as part of a widespread and systematic attack against the civilian population with his knowledge of the attack. Lastly, Al Bashir is charged with war crimes under Art. 8 (2)(e)(i) of the Statute, for intentionally directing attacks against the civilian population, and Art. 8 (2)(e)(v) of the Statute pillaging a town or place.

Two of the ten charges against Al Bashir are for the rape and sexual assault of women and girls: Count 2 for Genocide against the Fur, Masalit and Zaghawa ethnic groups by using the state apparatus, the Armed Forces and Militia/Janjaweed, to cause serious bodily or mental harm through acts of rape, other forms of sexual violence, torture and forcible displacement, with intent to destroy the groups. Count 8 for Crime Against Humanity for rape of women and girls including but not limited to women and girls in Bindisi, Arawala, Shataya, Kailek, Silea, and Sirba and IDP camps.

The Indictment stated that the fact that attacks are aimed at civilians is exemplified “by the systematic raping of women.” Rape and gang rape are allegedly used as a weapon of destruction and that “thousands of women and girls belonging to the target groups were raped in all three States of Darfur ... since 2003. Girls, as young as 5, have been raped. A third of the victims of rape are children.” The Indictment also has a specific section on *Massive rapes causing serious bodily and mental harm* where the rape and sexual violence experienced by women and children and their impact on their lives and on their communities is detailed. The section asserts that “(R)ape is an integral part of the pattern of destruction” and quotes from the International Criminal Tribunal for Rwanda (ICTR) in the *Akayesu* case, that rape is used to “kill the will, the spirit, and life itself”.

In establishing genocide, the filing states that “the magnitude of the rapes and sexual assaults indicates an intent to destroy the target groups...” It also quotes the denials of rape by Al Bashir and states that imposing conditions “calculated to bring about the physical destruction of the target groups, if combined with a studied misinformation campaign, was an efficient strategy to achieve complete destruction”.

The Prosecution submitted evidence of crimes against humanity in order to represent the full extent of criminal activity in Darfur since 2003, especially acts including rape committed against women and girls of the targeted groups and other, smaller ethnic groups, such as the Tunjur, Erenga, Birgid, Misseriya Jebel, Meidob, Dajo and Birgo.

The Council of the Arab League issued a strong statement expressing concern regarding the indictment against Al Bashir and its impact on the Darfur peace process and on the sovereignty, unity and stability of Sudan. The 22-member nations League stressed solidarity with Sudan and criticised the “unbalanced stand by the ICC prosecutor regarding the request in the indictment he referred to the court.” In its resolution, the League recognized “the legal competence and independence of the Sudanese judiciary, and that it has the original jurisdiction to establish justice.”¹ On 23 July, Hesham Youssef, chief of staff for Arab League Secretary-General Amr Moussa, stated that Sudan had agreed to try anyone it suspected of crimes in Darfur including the possibility of setting up special courts, employing special prosecutors and to permit monitoring of the trials by the UN, the African Union and the Arab League.

On 21 July, the Peace and Security Council of the African Union (AU), while concerned over the gross violation of human rights in Darfur and the importance of accountability for any long term peace and reconciliation in the area, expressed grave concern on the potential impact of the application for an arrest warrant against Al Bashir. The African Union invited the UN Security Council (UNSC) to stay the proceedings before the ICC for a period of 12 months, as it is entitled to do under Article 16 of the Statute. They proposed the setting up of a High-Level Panel that will submit recommendations on how accountability and reconciliation could be addressed, including through the establishment of a truth and/or reconciliation commission. The AU urged the Sudanese parties to ensure that impunity is addressed and for the Sudanese government to take immediate steps to investigate violations and bring to justice the perpetrators.

In the past, there has been an absence or under-charging of gender-based crimes in each of the situations before the ICC. There are no charges for these crimes against Thomas Lubanga nor Bosco Ntaganda (DRC) and limited charges against Jean-Pierre Bemba (CAR). The Al Bashir indictment along with the charges of rape against Ahmad Muhammad Harun and Ali Kushayb demonstrate a clearer charging strategy for Darfur than for the situations under investigation by the ICC.

Al Bashir is charged in his personal capacity under Article 25(3) (a) for commission of these crimes through members of the state apparatus, the army and the Militia/Janjaweed.

This proposed case is the second case in Darfur to be brought before the International Criminal Court. The first is the Case of the Prosecutor v. Ahmad Muhammad Harun and Ali Muhammad Al Abd-Al-Rahman where PTC I issued arrest warrants against them on 2 May 2007, approximately eight weeks after the Prosecution filed an Application for a Warrant of Arrest.

11 Victims to Participate

On 18 June, the Appeals Chamber decided to permit 11 victims to participate in Appeals in the Situation in Darfur, after Pre-Trial Chamber I granted the 11 applicants procedural status at the investigation stage on 6 December 2007.

¹ BBC Monitoring Middle East, 20 July 2008

The Appeals Chamber recognized that the applicants' personal interests were affected and that any change to the application process will affect the procedural rights they were granted by PTC I and, therefore, it was appropriate for them to participate in this stage. The victims are limited to presenting their views and concerns that are specifically relevant to the issues arising in the appeal and to the extent that their personal interests are affected by the proceedings. The Appeals Chamber also stated that it had no jurisdiction to provide guidelines on general application procedures because doing so would mean that the Chamber "would have to assume the role of an advisory body."

On 24 June, victims filed their views and concerns in the above appeals and stated that the approach of the Prosecution and the Defence to victims' applications for participation is not supported by the law; it requires a lot of resources from vulnerable victims and bars victim participation in the process. It would "fundamentally thwart the central role for victim participation contemplated by the Statute." The victims also urged the Appeals Chamber to properly take into account the nature and characteristics of the stage of the proceedings in which the victims were admitted. They reminded the Chamber that contrary to the Defence, that victim participation gives "effect to a right of revenge or an *actio popularis*," victim participation at the earliest stages is to "vindicate the victims' right to truth."

Security in Darfur

The security situation in Darfur continued to deteriorate. On 8 July, a joint police and military patrol of the United Nations/African Union Mission in Sudan (UNAMID) was attacked in an area approximately 100 kilometers southeast of El Fasher. The UNAMID troops were engaged in a firefight that left seven UNAMID troops and police dead, 22 injured and several vehicles either destroyed or taken during the attack. The attack was condemned by UN Secretary General who announced a preliminary fact finding mission on 10 July. The UN Security Council also condemned the attack unanimously after being briefed by the UN chief of peacekeeping operations, Jean-Marie Guéhenno, who told the Council that there was information confirming that Sudanese military forces were responsible for the attack. This charge was denied by the Sudanese Ambassador to the UN. On 14 July, UNAMID announced that it will relocate all non essential staff "due to the recent deteriorating security situation across Darfur." This is notably the same day the Prosecutor submitted an Application for a Warrant of Arrest for President Al Bashir.

Following the report of the Prosecutor to the United Nations Security Council (UNSC) on 5 June, UNSC unanimously adopted on 16 June a Presidential Statement urging Sudan's government to fully co-operate with the ICC "consistent with resolution 1593 (2005), in order to put an end to impunity for the crimes committed in Darfur." This was the first time the Security Council made a statement regarding Sudan's non co-operation with the ICC since referring the situation in Darfur in 2005 under Security Council Resolution 1593.

Meanwhile, on 28 June, the African Union (AU) and the United Nations (UN) appointed Burkina Faso Foreign Minister Djibril Bassolé to be the new joint AU - UN special envoy for Sudan, tasked with overseeing the search for military and political solutions to the crisis in Darfur. He replaced AU Special Envoy Salim Ahmed Salim and the UN Special Envoy Jan Eliasson.

Democratic Republic of the Congo (DRC)

Lubanga Dyilo Trial

On 7 July, the Appeals Chamber granted suspensive effect to the Appeal of the Prosecutor in the case of Prosecutor vs. Thomas Lubanga Dyilo. This means the decisions of the Trial Chamber regarding Lubanga's release is currently suspended and he remains in detention in The Hague.

On 2 July, the Trial Chamber ordered that, unless the Appeals Chamber orders a suspension of this decision pending appeal, Thomas Lubanga may be released on 7 July. The release order was subject to identifying a country that was willing to issue a visa for Lubanga. The Prosecution immediately appealed against this decision on 2 July. The Prosecution further requested the Appeals Chamber to grant the appeal a suspensive effect over the Trial Chamber's decision on release under Article 82(3) of the Rome Statute and Rule 165(5) of the Rules of Procedure and Evidence. On 7 July, the Appeals Chamber granted suspensive effect to the Appeal of the Prosecutor and gave its reasons on 22 July. The Chamber found that the likelihood of Mr Lubanga not being available for prosecution before the ICC is very high in the event the Appeal against the Stay of Proceedings succeeds. Thus, any release of Mr Lubanga at this stage would be tantamount to pre-determining the results of the Appeal. On 8 July, the legal representatives of victims made an application to participate in the appeal.

On 2 July, the Trial Chamber granted the Prosecution leave to appeal on the following issues raised:

- a. Whether the Trial Chamber erred in the interpretation of the scope and nature of Article 54(3)(e) of the Statute and in its characterization of the Prosecution's use of it as constituting "a wholesale and serious abuse, and a violation of an important provision which was intended to allow the prosecution to receive evidence confidentially, in very restrictive circumstances".
- b. Whether the Trial Chamber erred in the interpretation and exercise of its authority under Article 64 of the Statute; whether the Chamber correctly determined that its obligation to ensure the accused receives a fair trial is dependent on the prosecution disclosing any potentially exculpatory evidence to the defence under Article 67(2) of the Statute (having first delivered the evidence in full to the Chamber for review and decision in case of doubt); and whether it imposed a premature and erroneous remedy in the form of a stay of the proceedings.

The Prosecution appealed on 23 June against the decision of the Trial Chamber to stay the proceedings against Thomas Lubanga. On 24 June, the Trial Chamber held a Status Conference which was meant to decide on the release of Thomas Lubanga but postponed the decision until they heard from all the parties regarding the application for leave to appeal filed by the Prosecutor.

During the Status Conference, representatives for the victims stressed the need to be heard given that it may be the last occasion victims will be heard in the case. They stressed the need for clarity in the proceedings and expressed the hopes of victims who had been relying on the international system to deliver justice in the absence of remedies in the domestic arena. They also highlighted the environment of fear that is currently pervading the Ituri region due to the

uncertainty in the proceedings and the likelihood of retaliations by Lubanga's supporters if he is released.

The Defence brought up the problems regarding disclosure and referred in particular to the fact that the Prosecution indicated that it had discovered almost 1200 documents on 20 June and that some of them may have information that is exculpatory in nature. The OTP has been notably late in disclosing material in preparation for the trial and the Defence has complained on several occasions. The cut off date for disclosure of evidence to be relied upon at trial was 90 days prior to the commencement of the trial.

On 13 June, the Trial Chamber stayed the proceedings in the Lubanga trial due to the Prosecution's failure to disclose potentially exculpatory material to the Defence. The Prosecution did not disclose these materials because they had been provided to the Prosecution on the basis of confidentiality agreements under Article 54(3)(e) of the Statute. The bulk of the documents covered by these agreements were from the United Nations. However, a letter from the United Nations to the Prosecutor dated 20 June stated for the record that the UN had no objections to the Judges of the Trial Chamber viewing the documents covered by Article 54(3)(e). The documents, however, must be viewed at the UN premises in The Hague, at the Peace Palace and subject to the condition that the documents are viewed in the presence of an officer of the UN, solely by the judges and that the judges will not take any notes while in the room and that no contemporaneous notes will be taken. Further, after a determination by the Judges, the UN may agree to summaries made by the Prosecution.

At the Status Conference on 24 June, the Judges of the Trial Chamber raised their concerns regarding the procedure outlined in the UN letter including the fact that the letter limits access of documents only to the Trial Chamber whereas it is also possible that the matter becomes a subject of appeal in which case the Judges of the Appeals Chamber must also be provided access to the documents. The President of the Trial Chamber indicated that it is unlikely to approve a system where the Chamber is not permitted to retain or study the information or compare it with other evidence in order to assess its relevance and determine its exculpatory nature or whether it is subject to the disclosure rules of the Court.

On 11 July, the Prosecution filed an application to lift the stay in the proceedings in the trial imposed by the Trial Chamber on 13 June. This was consequent to the Trial Chamber's statement during the hearing on 24 June that the Prosecutor may apply for a stay only when it can address the restrictions requested by all information providers relating to the totality of the Undisclosed Evidence, 204 items as of 11 July – 152 were from the United Nations (UN) and 52 were from non-governmental organizations (NGOs). The Prosecution informed the Trial Chamber that all information providers had agreed to a review of all items by the Trial Chamber and also agreed to redacted versions of all documents being provided to the Defence. One NGO, however, refused to disclose any version of 21 of its documents. The Prosecution submitted that, in any event, the Trial Chamber will now be able to assess the impact of non-disclosure of the 21 documents, even in their redacted format, to the Defence. Thus, the key reason for the imposition of the 13 June decision, the stay in the proceedings in the trial, is now addressed.

As part of its application for lifting the stay, the Prosecutor filed three letters from the UN – two dated 3 July and one dated 8 July outlining the procedures for disclosure to the Trial

Chamber (TC) – and a decision from the Trial Chamber agreeing to the terms requested by the UN. The UN agreed to disclose all items to the Trial Chamber subject to this being in closed sessions/ ex–parte, i.e. no access to accused or victims, and that the TC may review all the documents, the Office of the Prosecutor may provide translations of the French documents and the Judges may make notes for purpose of clarification. This takes into account some of the reservations the Judges expressed during the hearing on 24 June regarding the procedures originally outlined by the UN from its 20 June letter. If the Judges decide that any of the information in the items must be disclosed to the accused or the Defence, the UN will provide narrative summaries that the Judges may compare with the originals for accuracy and sufficiency. If this is inadequate, the UN is willing to explore other means of providing this information to the Defence, subject to the protection measures provided for in the Rome Statute and the Rules of Procedure and Evidence. The documents must then be returned to the OTP unless the Appeals Chamber gave procedures to be followed prior to completing the review of the documents by the Trial Chamber. In this case, the documents may also be provided to the Appeals Chamber but subject to the same conditions.

All six NGOs who provided items covered by the Undisclosed Evidence agreed that the items may be reviewed by the Trial Chamber but requested that their identities are not disclosed to the accused, the Defence or the public. Agreement has been reached that redacted forms of 31 of the documents may be provided to the Defence after review by the Trial Chamber. The Prosecution will discuss further with the NGO that is not willing to disclose 21 of its 22 documents to the Defence, in the event that the Trial Chamber determines that some material must be disclosed. The Prosecution states that since the Trial Chamber is now able to review the items concerned and will be able to determine whether or not the non-disclosure will constitute a breach of the rights of the accused to a fair trial, the stay in the proceedings may be lifted.

Status of victim and witness, types of harm for victims

On 5 June, the Trial Chamber gave a decision entitled “Public Decision on certain practicalities regarding individuals who have the dual status of witness and victim”. The key issue was the relationship between counsel for the victim, the party introducing the victim as a witness, and the Registry’s Victim and Witness Unit (VWU) who is in charge of protection and security issues for witnesses and victims. The Chamber gave strict guidelines on how an individual should be contacted by each group and the VWU was tasked with managing the relationship in a manner that will not be prejudicial to the safety and well-being of the individual concerned. The Chamber also provided for the presence of a legal representative when an individual is making a statement or being subject to medical examination. The decision took into account both situations when a victim has a legal representative and when a victim is being represented by the Victim Participation and Reparation Section. The Chamber rejected the proposition from the Prosecution and the Defence that the party relying on the witness must consent to or be notified of the contact between legal counsel (VPRS) and the victim via the VWU.

Meanwhile, on 11 July, the Appeals Chamber gave its first decision on the types of harm that could constitute a claim for status of victim at trial stage and also clarified the modes of participation for victims in the trial. In its judgement on the appeal from the decision of the Trial Chamber of 18 January 2008, where several people were admitted as victims of the case, the Appeals Chamber held that victims do not need to establish that the harm they suffered was direct but must establish that it was personal. Further, the Appeals Chamber

found that participation in trials is restricted to victims of the crimes contained in the charges confirmed by the Pre-Trial Chamber. As far as the modalities of participation are concerned, the Appeals Chamber rejected the objections by the Prosecution and the Defence and confirmed that participating victims may “lead evidence pertaining to the guilt or innocence of the accused when requested, and challenge the admissibility or relevance of evidence in the trial proceedings”. It also commented on the fact that unlike with natural persons, organizational or institutional victims must allege direct harm to participate. The Appeals Chamber considers that there may clearly be harm that could be both personal and collective in nature but the pertinent question for participation before the ICC is whether the harm is personal to the individual victim.

Documents on child soldiers

On 11 July, the Appeals Chamber gave its judgement on the appeal against the Oral Decision of Trial Chamber I of 18 January 2008 confirming most of the Trial Chamber’s ruling, while stressing the rights of the accused to be silent. However, the Appeals Chamber reversed the decision of the Trial Chamber relating to the ruling that the Prosecutor is not under an obligation to serve material that relates to the general use of child soldiers in the Democratic Republic of the Congo. Despite the reversal, the Appeals Chamber also ruled that it is the Trial Chamber that “will have to determine whether or not the appellant has a right to access the entire statements containing information on the general use of child soldiers.”

The Prosecutor had requested the Trial Chamber to be relieved of his obligation to disclose the statements containing the relevant information, and to disclose summaries of these statements instead. The Trial Chamber has not yet decided on this request. In such circumstances, the Appeals Chamber considers that it is appropriate to reverse the Order on Non-Disclosure because this order was materially affected by an error of law.

Katanga/ Ngudjolo Confirmation of Charges Hearing

The hearings into the confirmation of charges against Germain Katanga and Mathieu Ngudjolo commenced before PTC I on 27 June and ended on 16 July. PTC I’s decision on the charges is expected shortly. The case against the two suspects was joined in March as they face the same charges for the same attacks in Bogoro village on 24 February 2003. They are charged with 13 counts of war crimes and crimes against humanity including rape and sexual slavery both as a war crime and as a crime against humanity. On 27 June, the three counsels for the 56 victims admitted to the proceedings made their opening statements and reminded the Chamber that their objective was to assist in establishing the truth surrounding the attack and to mirror the impact of the crimes committed on the victims and their communities.

On 9 July, Mr Katanga did not appear at the confirmation hearings and has applied to waive his right to be present during the confirmation hearings stating that he was fatigued and was missing his family. The hearings continue despite his absence. On the same day, PTC I decided to grant the Prosecution and victims participating in the confirmation hearings in the Katanga/ Ngudjolo case until 24 July to submit observations on the potential release of Katanga during the hearings on whether the conditions imposed by Article 58(1)(b)(ii) of the Rome Statute continue to be fulfilled, i.e., is the continued detention of Germain Katanga “necessary to ensure that he will not obstruct or endanger the investigation or the court proceedings.”

On 20 June, PTC I rejected an application from the two Defence teams to stay the proceedings on the basis that the Prosecutor had failed to disclose several documents that were identified as potentially exculpatory or material to the Defence's Preparation for the Confirmation Hearing. The Prosecutor stated that the documents had been provided to the Prosecution upon the condition of confidentiality under Article 54(3)(e) of the Statute. PTC I found that the decision in the Lubanga case was not applicable since at pre-trial stage, the applicable test was the "bulk rule" – i.e., whether *most* of the documents identified as potentially exculpatory had been disclosed. The Chamber also held that it was not necessary to stay the proceedings, so far as the Prosecutor can utilize the principle of analogous information effectively for the purpose of the confirmation hearings. PTC I ordered the Prosecutor to expeditiously obtain consent from the United Nations to lift confidentiality restrictions on documents that may be exculpatory or otherwise material to the Defence, again request consent from other information providers who have previously denied the request, and file a comprehensive report every three weeks on the status of the requests.

On 25 June, PTC I decided to accept part of the Defence application of 9 June for a change to the Prosecution's Amended Charging document of 12 June and ordered that the said document be amended for clarity by deleting a section of the document and substituting more precise language in one paragraph. PTC I however, refused to grant a stay in the proceedings and the Prosecution filed an amended charging document consequent to this decision on 26 June 2008.

Victims participate in the Situation in DRC

On 3 July, PTC I admitted 32 applicants, including three former girl soldiers, to participate at the investigation stage in the Situation in the DRC.

On 30 June, the Appeals Chamber granted 60 victims the right to participate in the appeals against the decisions of PTC I granting some victims the right to participate at the investigation stage of the case. The Chamber recognized that the 60 victims, who had been recognised as victims by PTC I, should be recognized in the appeal because they had all demonstrated a personal interest in the issues and that it was desirable to hear their views on the matter. Their participation was limited to presenting their views and concerns on their personal interests solely to the issues raised on appeal. Applications from 60 other people whose status had not been determined by PTC I were rejected.

The Appeals Chamber also ordered that all applications by victims must be filed as soon as possible, after the appeal is filed and/or within the timeframe established by the Rome Statute. The criteria for evaluating an application are the following: complete application; victim is a natural person; has suffered harm; the harm is from a crime within the jurisdiction of the Court; and, the causal link between the crime and the harm suffered.

The Appeals Chamber rejected the Defence position that documents offered as proof of identity must be certified by a recognized authority and stated that identity documents are very difficult to obtain in conflict situations and that it did not wish to burden applicants who are most often found to be indigent at this stage. PTC I, however, continue to stress the importance of identity documents for applicants and any person who was acting on behalf of applicants and, in the applications made on behalf of another, the stringent requirement for proof of consent to applications or proof of kinship or guardianship in the case of minors. On

this basis, PTC I rejected applications from 18 people whose applications were incomplete but recognized that they could re-file their applications.

Northern Uganda

On 18 June, in the case of Prosecutor vs. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen, Pre-Trial Chamber II (PTC II) requested detailed information from the Government of Uganda on the latest development on the co-operation provided by the Republic of Uganda in order to execute the arrest warrants against the accused. PTC II also requested details of the steps currently undertaken by the Republic of Uganda with the view to executing the warrants. The request was made on the basis of “several developments” in Uganda including the government’s initial response on 28 March on the arrest warrants and the recent failure to sign the final peace agreement.

On 9 July, the government of Uganda responded to PTC II reiterating its commitment to co-operate with the ICC regardless of the peace agreement and to execute the warrants “if the opportunity should arise”. The government stated its readiness to be “part of any coordinated efforts that may be undertaken by the Court and the international community to achieve this goal.” The government also stated that “there must not be impunity for the perpetrators of the crimes in Northern Uganda” and that, while the Agreement on Reconciliation and Accountability provided for a special division of the High Court of Uganda to try individuals responsible for the most serious crimes, this was “without prejudice to Uganda’s commitments under the Rome Statute of the International Criminal Court and the Co-operation Agreement between the Government of Uganda and the Office of the Prosecutor”.

The government reminded PTC II that, in the last three years, the Lord’s Resistance Army (LRA) was based in the Democratic Republic of Congo (the DRC) and is “beyond Uganda’s territorial jurisdiction.” It noted that any attack on the LRA must be with the consent of the Government of the DRC, otherwise “it would be a breach of international law.” It stated that it “continues to...secure the co-operation of the Government of the DRC and the United Nations Mission in the DRC (MONUC) in this endeavor” and urged the Court to secure the co-operation of the DRC Government in this regard.

Meanwhile, on 2 June 2008, PTC II granted the Defence leave to appeal the 14 March 2008 decision “in order to establish mental harm suffered by another person, should the identity of the latter and the relationship the applicant has with the person be required”. The appeal is currently pending before the Appeals Chamber. On 20 June, the counsel for six of the victims who were granted status of victim by PTC II by its 14 March 2008 decision, made an application to the Appeals Chamber to be permitted to participate in the appeal.

Central African Republic (CAR)

On 4 July, Jean-Pierre Bemba, the first person to be arrested for crimes committed in CAR made his first appearance before Pre-Trial Chamber III (PTC III). Mr Bemba was arrested by the Belgian authorities on 24 May and was surrendered to the ICC on 3 July. Mr Bemba, President and Commander in Chief of the *Mouvement de Libération du Congo* (MLC) in the DRC, is charged with five counts of war crimes and three counts of crimes against humanity committed on the territory of the Central African Republic from 25 October 2002 to 15 March 2003, including commission of rape both as a war crime and a crime against

humanity. Mr Bemba is the most senior political figure to be arrested on behalf of the ICC and gave his occupation as “senator” during the first appearance. On 22 July, Bemba's property has been seized by the Portuguese authorities on behalf of the ICC.

On 10 July, the Registrar of the ICC visited CAR where she underlined the necessity of ensuring effective participation by victims and the importance of witness protection. She met with members of civil society, media, government officials, diplomats and representatives of international organizations.

Women’s Initiatives for Gender Justice

Gender Justice Forum

The Women’s Initiatives for Gender Justice, Africa Legal Aid (AFLA) and the International Criminal Tribunal for Rwanda (ICTR) co-organized the Gender Justice Forum held in The Hague on 7-8 July 2008. By underscoring ICTR's contribution to gender justice, the forum sought to develop strategies that may be carried forward to the ICC in order to broaden international jurisprudence on gender-based crimes and advance gender justice. Speakers and participants to the Forum include distinguished personalities: Luis Moreno-Ocampo, Prosecutor of the ICC; Navanethem Pillay, Judge of the ICC, former President of the ICTR, and soon to be United Nations High Commissioner for Human Rights; Adama Dieng, U.N Assistant Secretary-General and Registrar of ICTR; Judge Dunstan Mlambo, Chairperson of South Africa Legal Aid Board, Florence Mumba, Judge of the Supreme Court of Zambia and former Judge of the International Criminal Tribunal for Yugoslavia; and Patricia Viseur-Sellers, Visiting Fellow of Kellogg College, Oxford University. About 60 participants to the forum explored topics such as Accountability for Gender Based Crimes, Gender Justice in a Socio-Economic Context, African Perspectives on Gender Justice, and the Future of Gender Justice.

Brigid Inder, Executive Director of the Women’s Initiatives, spoke at the session on “The Future of Gender Justice: The Work of the ICC and other bodies.” In her presentation, she recognized the “historic and ground-breaking” work of the ICTR in its jurisprudence since its first decision “for rape as genocide and several other important decisions regarding gender-based crimes.” The work for gender justice however, is one that the ICC must learn from the ICTR as it is tasked to investigate, prosecute and charge gender-based crimes in four situations currently before it. Inder proposed four strategies that may assist the Office of the Prosecutor in meeting the current and future challenges:

- ✓ appoint a Gender Legal Advisor;
- ✓ develop more effective legal strategies and better case-planning to avoid the fundamental challenges before the Court today and enable the Court to resolve ahead of time foreseeable problems;
- ✓ strengthen community relationships – not only to manage expectations, but to address the ‘proximity’ of victims to justice. The court will also have greater access to community information and knowledge regarding the cases and situations currently before them.
- ✓ support the election of a new Deputy Prosecutor as Head of Investigations, a post which has been vacant since January 2006.

The Women's Initiatives brought together for the Forum and strategy meetings some of our partners from Central African Republic (CAR), the Democratic Republic of the Congo (DRC) and Uganda.

New Publications

In July, the Women's Initiatives produced two new publications, **Making a Statement: A Review of Charges and Prosecutions for Gender-based Crimes before the International Criminal Court**, and **Legal Filings Submitted by the Women's Initiatives for Gender Justice to the International Criminal Court**.

Making a Statement is a collection of statements and commentaries written by the Women's Initiatives since 2005 in response to the opening of investigations, the unsealing of warrants of arrest and the announcing of charges brought by the Office of the Prosecutor (OTP) in each of the situations and cases before the International Criminal Court. It serves as a review of the record of the OTP until June 2008 in charging and investigating violence against women in each of the four conflicts currently before it.

The **Legal Filings Submitted by the Women's Initiatives for Gender Justice to the International Criminal Court** contains two filings of request for leave to participate as Amicus Curiae in relation to the case of Prosecutor v. Thomas Lubanga Dyilo and the situation in the Democratic Republic of the Congo. The first filing relates to the interests of victims, the powers of the Pre-Trial Chamber to provide oversight of Prosecutorial discretion, and the determination of sufficient evidence to establish accurate charges against a suspect under Article 61(7) of the Rome Statute.

The second filing is an Application for leave to participate as Amicus Curiae in relation to the DRC situation. This is in response to the invitation from the PTC to re-file our request and submit observations in the record of the DRC situation, not in the case of Lubanga.

The publication includes the decisions rendered by Pre-Trial Chamber I to our requests and our letter to the Prosecutor calling for the opening of investigations into gender based crimes allegedly committed by the UPC militia, of which Lubanga was the Founder and President. The Women's Initiatives for Gender Justice was the first NGO to file a request for leave to participate as Amicus Curiae before the International Criminal Court.

Both publications are available on our website, www.iccwomen.org.

Status of the Peace Talks in Uganda

On 31 July the Women's Initiatives met with the Chief Mediator of the Peace Talks to discuss the reasons for the delay in the signing of the final Peace Agreement. This Agreement was to have been signed on 10 April but was abandoned following the non-attendance at the signing ceremony of LRA leader Joseph Kony. At that time Kony requested more information on the justice mechanisms in the Agreements, the use of traditional mechanisms for reconciliation and the interaction between the proposed Ugandan Special Court and the ICC. On 25 June, Kony gave an interview with Radio France where he renewed his commitment to the peace process and announced a new delegation to make arrangements for the signing of the final peace agreement.

In July, General Kony contacted both the Mediator of the Peace Talks, Dr Riek Machar and the UN Special Envoy of the Secretary-General for LRA-affected areas, President Joaquim Chissano. This is the first direct communication from Kony to these two figures in more than a year. Preparations are well underway for a new attempt to have the Peace Agreement signed with Kony indicating he is ready to sign by the end of July. The LRA leadership has requested a meeting with the Women's Initiatives to address concerns regarding the welfare and safety of women and children in the lead up to and during the Demobilization, Disarmament, Reintegration and Resettlement (DDRR) process.

Since June 2007, the Women's Initiatives has been working closely on the peace process and Peace Talks in Uganda. We have provided training for women from the Greater North of Uganda on the Peace Agreements, mobilized and supported hundreds of women from the North to participate in the consultations held by the Government of Uganda and the LRA on the mechanisms for accountability and reconciliation, provided humanitarian assistance during the ceasefire and negotiations process, supported a team of women most affected by the conflict to attend the resumed talks in 2008, and co-organized with the United Nations a training for the Government of Uganda and the LRA on DDRR.